IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3596 of 2001

Between:

1. Mohd.Abdul Khaiyoom, R/o 27-37-122, M.G.Road, Vijayawada.
2. M.A.Azim, Secretary, Masjid Quvvatul Islam, Maruthi Nagar, H.No.28-24-41, Hussain Street, Arundal pet, Vijayawada.

..... PETITIONERS

AND

1. The Principal Secretary,

Department of Minorities Welfare (MFC) Dept.,

Secretariat, Hyderabad.

2. Chief Executive Officer,

A.P.Wakf Board, Block-IV, Manoranjan Comples,

ExhibitionGrounds, Hyderabad.

3. District Collector and Magistrate, Krishna District,

Machilipatnam.

4. Executive Engineer, R&B, Labbipet, Vijayawada-10.

5. Abdul Raheem Afsar, R/o Sarai Mosque Wakf, Vijayawada-1.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, writ or direction especially a writofmandamus declaring the action of the respondents converting an extentof Ac.3-90 cents out of the total extentof Ac.6.90 cents of the grave yard in NTS No.120 at Vidyadarapuram, Vijayawada, for the purpose of development including the construction of Shadikhana as illegal, arbitrary, high handed and against the tenets of Muslim Law.

Counsel for the Petitioner:SMT.C.JAYASREE SARATHY

Counsel for the Respondent Nos1, 3 and 4.: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.2: Sri S.M.Subhani

Counsel for the Respondent No.5: Sri E.Ayyupu Reddy

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

One Mohd Abdul Khaiyoom and another have filed this petition as Public Interest Litigation against the respondents seeking direction to declare the action of the respondents in converting an extent of Ac.3.90 cents out of total Ac.6.90 cents of land in N.T.S.No.128 of Vidyadarapuram, Vijayawada for the purpose of development including construction of a marriage hall as illegal. The Principal Secretary, Department of Minorities' Welfare is impleaded as first respondent. The District Collector, Krishna and Executive Engineer, Roads and Buildings Labbipet, Vijayawada have been impleaded as respondents 3 and 4.The Chief Executive Officer, A.P. Wakf Board is impleaded as respondent No.2 and one Mr.Abdul Raheem Afsar, as respondent No.5.

The petitioners have alleged that Ac.6-90 cents of land in the aforesaid survey number is a Muslim graveyard and respondents, in a highhanded action, are converting an extent of Ac.3-90 for development purpose. The petitioners have referred to G.O.Rt.Nos.58 and 103 dated 5th March, 1999 and 31st March, 1999 respectively, issued by the first respondent sanctioning amounts for construction of marriage halls at various places and making available funds for construction thereof. The petitioners have also questioned the action of the fifth respondent in having approached the second respondent with a proposal to earmark Ac.3-00 of land for burial ground and the remaining land of Ac.3-90 for development purpose saying that respondent No.2 ignoring the judgment of the Land Grabbing Court has issued a munthakab dated 10-11-1998 bifurcating the land as proposed by the fourth

respondent, which is not permissible in law. The petitioners thus question the act of respondents in converting Ac.3-90 cents for construction of a marriage hall and for development purpose.

Counter affidavits have been filed by the second and fifth respondents.

The second respondent states that the graveyard was not notified earlier. Even the wakf property was not notified earlier. It was notified on the basis of the proposals submitted by the fifth respondent for issuance of munthakab earmarking Ac.3-00 of land for graveyard and Ac.3-90 cents for development activity. Similar is the stand taken by respondent No.5. We need not take into consideration the other allegations made by respondent No.5 personally against the petitioners.

We have heard the learned counsel for the parties and gone through the provisions of the Wakf Act, 1995.

Section 36 of the Wakf Act says that every wakf whether created before or after the commencement of the Act shall be registered at the office of the Board and application for registration shall be made by the muthawalli subject to the proviso that such application may be made by the Wakf or the descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs. The application is required to be submitted in a particular form prescribed in sub-Section (3). The Board is required to make certain enquiries in respect of the genuineness and validity of the application and correctness of the particulars. Section 37 of the Act provides for maintenance of a register of wakfs. There is also provision contained in the Act for amendment of the Register, which the Board alone under Section 41 is entitled to carry out the amendments to the Register.

In the A.P. Gazette published on 29th July, 1999, the abstract of the book of endowment munthakab (wakf register) dated 10th November, 1998 was published stating that it is a wakf by user and proposal is submitted by Shaik Ahmed and as to the nature of the wakf, it is stated that an extent of Ac.3-00 is meant for Muslim burial ground and remaining Ac.3-90 for development purpose. The name of muthawalli is shown as A.P.State Wakf Board. The property thus has been registered on 10th November, 1998 and under Section 36 of the Act in the Wakf Register. Therefore, in the absence of any other material produced by the petitioners, it has to be assumed that the wakf has rightly been registered and entered in the Register. The wakf is as

per the user for which we also make reference to the affidavit of Mohd. Jaleel Khan, M.L.A., West Constituency, Vijayawada, who also supports the version of the respondents that only Ac.3-00 of land was being used as graveyard and the remaining Ac.3-90 is left over and some agricultural operations are being carried out for some time in the said area. The Managing Committee which has been constituted for the Mosque felt that Ac.3-90 cents out of Ac.6-90 cents is found excess for the purpose of graveyard and therefore, proposal was submitted for development activity in the excess Ac.3-90 cents for the benefit of the Muslim community.

In view of the affidavits, we do not find any illegality in the action of the respondents in utilizing Ac.3-90 of land for the purpose for which it is proposed to be used viz., for the benefit of the Muslim community and in such like petitions filed as Public Interest Litigation, where property is used for the benefit of a community as a whole, there cannot be any interference by the court; more particularly when in the instant case, the wakf stands duly notified and no action has been taken by the petitioners to have the wakf property deregistered or modified in accordance with the provisions of the Act.

The petition is dismissed.

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DEVINDER GUPTA, CJ

16-8-2004

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C.V.RAMULU, J

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To

1. The Principal Secretary,

Department of Minorities Welfare (MFC) Dept.,

Secretariat, Hyderabad.

2. Chief Executive Officer,

A.P.Wakf Board, Block-IV, Manoranjan Comples,

ExhibitionGrounds, Hyderabad.

3. District Collector and Magistrate, Krishna District,

Machilipatnam.

4. Executive Engineer, R&B, Labbipet, Vijayawada-10.

5. 2 CCs to the Govt. Pleader for Social Welfare, High Court Buildings,

Hyderabad, (OUT).

6. 2 CD copies.